IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.MC.No. 2322 of 2007()

CRA.434/2003 of SESSIONS COURT, ALAPPUZHA
CC.47/2000 of JDUL.MAGISTRATE OF FIRST CLASS, RAMANKARI

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PETITIONER:

ABDUL LATHEEF,
THARAPARAMBU PADINJARETHU, MANNANCHERRY P.O.,
ALAPPUZHA.

BY ADV. SRI.MOHAN IDICULLA ABRAHAM
SRI.MARTIN D.ALUMKARA

RESPONDENTS:
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1. THANKAMMA MICHAEL,
KOCHEEKKARAN VEEDU, THUMBOLY P.O., ALAPPUZHA.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.V.BALAKRISHNAN
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2322 of 2007

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Dated this the 19th day of July, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The verdict of guilty, conviction and sentence have now become final with the order passed by this Court in revision. The opportunity given by the revisional court was not taken advantage and the matter was not settled. Long later, the petitioner has come before this Court now along with the complainant to advance a contention that there has been a subsequent settlement of the dispute between the parties. The petitioner wants this court to invoke the jurisdiction under Section 482 Cr.P.C. to quash the sentence imposed on him. The sentence imposed on the petitioner is the substantive sentence of imprisonment till rising of court. There is a further direction to pay an amount of Rs.75,000/- as compensation and in default to undergo S.I. for a period of three months.

2. The learned counsel for the petitioner and the complainant, who are both before me, submit that the entire compensation amount has been paid and discharged and no further amount is claimed

towards compensation. If that be so, there can be no question of executing the default sentence. The position has been made very clear in the decision in **Girish** v. **Muthoot Capital Services (P) Ltd**. (2007 (1) KLT 16). What remains is only the substantive sentence of imprisonment till rising of court. **Sabu George** v. **Home Secretary** (2007 (1) KLT 982) is not authority for the proposition that all post-revision compositions can be accepted invoking the powers under Section 482 Cr.P.C. That was an exceptional case where the accused would have been compelled to undergo incarceration for a long period of time inspite of the settlement. Posed with that situation, this court took the view that that was an ideal situation in which the inherent powers under Section 482 Cr.P.C. can and ought to be invoked.

3. The dictum in **Sabu George** cannot be understood to mean that any and all post-revision compositions can hereafter be valid and can be accepted. I do not find any reason to invoke the powers under Section 482 Cr.P.C. in this case with the aid of the dictum in **Sabu George**. It is for the petitioner/accused and the respondent/complainant to satisfy the learned Magistrate that the entire compensation amount has been paid and there is no further liability to pay any amount of compensation. The direction was

only " to pay the compensation" and not to deposit the compensation amount. In these circumstances, if a joint submission is made that the entire compensation amount has been paid and that liability has been discharged and nothing remains to be paid, there can be no question of the learned Magistrate executing the default sentence.

4. This Crl.M.C. is accordingly dismissed. If the liability to pay compensation has been discharged, the petitioner shall be liable only to undergo the substantive sentence of imprisonment till rising of court.

5. Hand over the order.

(R. BASANT)
Judge

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